

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6786

Petition of Catamount Energy Corporation)
for a certificate of public good authorizing)
the installation of a temporary wind)
measurement tower on the ridgeline of Glebe)
Mountain, located between the Towns of)
Londonderry and Windham, Vermont)

Order entered: 1/29/2003

I. INTRODUCTION

This case concerns a petition filed by Catamount Energy Corporation ("Catamount"), requesting a certificate of public good ("CPG") under 30 V.S.A. § 248(j) for approval of a temporary wind measurement tower on the ridgeline of Glebe Mountain located between the Towns of Londonderry and Windham, Vermont. Catamount is considering construction of an electric generating wind facility on Glebe Mountain (the "Project"). The measurement tower is necessary for measuring the wind resources on the mountain and planning the Project.

Catamount served its original petition, prefiled testimony, proposed findings and a proposed order (along with a proposed CPG) on the Public Service Board ("Board"), the Vermont Department of Public Service ("DPS"), and the statutory parties on November 21, 2002.

Notice of the filing in this docket was sent on December 11, 2002, to all parties specified in 30 V.S.A. § 248(j) and all other interested persons. In addition, notice was published in the *Brattleboro Reformer* and *The Message for the Week* on December 18 and 24, 2002. The notice stated that any party wishing to submit comments as to whether the petition raises a significant issue with respect to the substantive criteria of 30 V.S.A. § 248 needed to file comments with the Board on or before January 14, 2003.

Notices of appearance were filed by: Aaron Adler Esq., Special Counsel, for the DPS; Warren T. Coleman, Environmental Litigation Attorney for the Agency of Natural Resources ("ANR"); James P. Matteau, Executive Director of the Windham Regional Commission; Robert M. Fisher, Esq., for the Town of Londonderry; Matthew Neely, Chairman, for the Town of Andover Selectboard; Deborah W. Granquist, for the Weston Planning Commission; and Lawrence G. Slason, Esq., for Samuel Lloyd, Charles Goodwin, Wayne and Deborah Granquist, William Cobb, Jr., and Judy Cobb, James and Sandra Wilbur, David and Barbara Hume, Robert and Lynne Schwartz, Charles and Mary Keck, Leon and Judy Mir, and William and Janis Karanza ("Lloyd et al.")

Specific comments about the petition were received from the DPS, the ANR, the Town of Andover, Lloyd et al., and Judy Davidson, who filed a letter in support of the petition.

Lloyd et al. suggest that the petition raises significant issues with respect to 30 V.S.A. § 248(b)(1) related to the orderly development of the region, and § 248(b)(5) related to esthetics and the natural environment. Specifically, they suggest that these criteria have not been adequately addressed by Catamount in its petition, and they request that the Board issue an order requiring Catamount to provide supplemental information demonstrating conformance with these criteria.

The ANR does not believe that the petition raises any significant concerns related to § 248(b)(5) and does not request a hearing. It does include comments related to possible future issues if Catamount proceeds with a wind generation facility on Glebe Mountain.

The DPS also does not believe that the proposed tower raises a significant issue with respect to the criteria of § 248(b). The DPS suggests that the concerns raised by Lloyd et al. mostly relate to any subsequent wind generation facility that Catamount might seek to develop on Glebe Mountain, and these concerns should not be applied to the temporary wind measurement tower. As for the issues that Lloyd et al. raise related to any required lighting of the tower, the DPS contends that these can be addressed by the Board by including a condition in the CPG that would require an amendment if any lighting is proposed. Finally, the DPS does not object to the issuance of a CPG if it also includes the following conditions:

- Catamount shall not use herbicides in connection with the approved project.
- Catamount shall minimize tree cutting in connection with the approved project and shall work with a professional forester, prior to cutting any tree, to determine which trees to cut.

The DPS filed a determination under 30 V.S.A. § 202(f) on January 17, 2003.

The Board has reviewed the petition, the accompanying documents, and the comments of the parties and agrees that, pursuant to 30 V.S.A. § 248(j), a CPG should be issued without the notice and hearings otherwise required by 30 V.S.A. § 248.

II. FINDINGS

Based upon the petition and accompanying documents, the Board hereby makes the following findings in this matter.

1. Catamount is a renewable generation and development company located at 71 Allen Street, Suite 101, Rutland, Vermont. Charlebois pf. at 1-2.

2. Catamount proposes to construct a temporary wind measurement tower on Glebe Mountain as the first step in the planning of a potential wind energy facility. Id. at 2.

3. Catamount is proposing to construct a wind measurement tower on Glebe Mountain because it has been identified as a location of potentially very good wind resources. In addition, there is already considerable infrastructure in place, including a ski area and an access road serving an existing communications tower. Id. at 3.

4. The tower is proposed on the Londonderry side of the mountain, adjacent to the peak, at an elevation of 2923 feet. The tower will be a galvanized, very thin monopole 50 meters tall with six sets of guy wires, and it will be equipped with anemometers and wind direction vanes on one or more levels. An electronic data recorder, powered by a battery with a photovoltaic panel for recharging, will be mounted at the base of the tower. The tower will rest on a steel plate with no foundation. Id.; petition at exh. Figure 2c.

5. The proposed tower site will require cutting or trimming of up to one-third of an acre of trees to gain access to the anchor locations during construction, and/or to allow the unobstructed passage of guy wires through the tree canopy. Charlebois pf. at 3-4.

6. Because of the existing infrastructure at the top of Glebe Mountain, tree clearing will be minimized. No earthwork, digging, water channeling, or blasting should be required. Tower components will be brought to the site by small trucks that can easily access the site via the existing drive that services the communications tower. The tower will be raised using a small winch. Id. at 4.

7. After the wind measurement period is over, the tower will be removed from the site and the area will be allowed to return to a natural setting. Id. at 10.

Orderly Development of the Region

[30 V.S.A. § 248(b)(1)]

8. The proposed tower will not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies and the land conservation measures contained in the plan of any affected municipality. This finding is supported by findings 9 through 10, below.

9. Catamount has met with the Windham Regional Commission and the Ludlow Selectboard and Planning Commission. Catamount is not aware of any conflicts with any pertinent land conservation measures in any applicable plans for a temporary wind measurement tower. Charlesbois pf. at 5.

10. Because the tower will be temporary and will only be in place for the two to three years necessary to collect meteorological data, there will be no permanent land use changes at the site relevant to local or regional plans. Id.

Discussion

Lloyd et al. argue that the petition raises a significant issue under this criterion. Specifically, these parties suggest that the petitioner has failed to provide sufficient information to meet its burden of proof that the installation of the wind measurement tower would not unduly interfere with the orderly development of the region. We agree that Catamount has not provided sufficient information for the Board to find that the installation of a wind generation facility on Glebe Mountain would satisfy this criterion. However, this petition is for a temporary wind measurement tower that will be in place for no more than three years. While the measurement

tower is a necessary precursor for a wind generation facility, it is not such a facility and it is in no way certain that Catamount will ever petition the Board for approval of such a facility.

Consequently, our analysis of this petition must be confined to the impacts of the measurement tower. It is our conclusion, particularly in light of the tower's temporary status and our findings under 30 V.S.A. § 248 (b)(5) related to aesthetics as set out below, that the impacts of this tower will be minimal and it will not unduly interfere with the orderly development of the region. We will ensure that the tower will only have a short-term effect on the region by including a condition that will require its removal within three years from the date of this Order.¹

Need for Present and Future Demand for Service

[30 V.S.A. § 248(b)(2)]

11. The proposed tower is necessary to accurately estimate the character of Glebe Mountain as a potential wind-powered electric generation facility site. *Id.* at 2.

System Stability and Reliability

[30 V.S.A. § 248(b)(3)]

12. The proposed towers use batteries recharged with a photovoltaic panel and thus will not adversely affect system stability or reliability. *Id.* at 3.

Economic Benefit to the State

[30 V.S.A. § 248(b)(4)]

13. The wind measurement tower will result in an economic benefit to the state and its residents because it will result in modest employment generated as part of the construction and maintenance of the tower. *Id.* at 7-8.

1. We note that the Lloyd et al. request for additional information as part of this review would convert the 248(j) process into a form of pre-litigation discovery and paper briefings which would eviscerate, in substance, the intent of the legislature in establishing the 248(j) process. While it may be necessary for the Board to require a petitioner to submit additional data if a 248(j) petition did not contain sufficient information to assess a project's impacts, that is not the case here. Instead, as noted in the findings, the Board has sufficient information to make findings under each of the statutory criteria.

**Aesthetics, Historic Sites, Air and Water Purity,
the Natural Environment and Public Health and Safety**

[30 V.S.A. § 248(b)(5)]

14. The proposed tower will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and the public health and safety. This finding is supported by findings 15 through 33, below, which are based on the criteria specified in 10 V.S.A. §§ 1424(d) and 6086(a)(1) through (8), (8)(A) and (9)(K).

Outstanding Resource Waters

[10 V.S.A. § 1424(a)(d)]

15. There are no watercourses in the vicinity of the proposed tower that have been designated as outstanding resource waters. Charlebois pf. at 8.

Water and Air Pollution

[10 V.S.A. § 6086(a)(1)]

16. The proposed tower will not produce any emissions or waste and thus will not result in undue water and air pollution. This finding is supported by the specific findings under the criteria of 10 V.S.A. § 6086(a)(1)(A) through (G), below. *Id.*

Headwaters

[10V.S.A. § 6086(a)(1)(A)]

17. Although the proposed tower is located in a headwaters area because it will be above 1500 feet, there are no streams in the vicinity of the site and thus, the proposed tower will not have an undue adverse impact on any headwaters. *Id.*

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

18. Because the proposed tower will not produce any emissions or waste, the proposed tower will meet all applicable health and Environmental Conservation Department regulations for disposal of wastes, and will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells. The DPS has recommended, and we will include, the following condition in the CPG to protect groundwater: "Catamount shall not use herbicides in connection with the approved project." *Id.*; DPS comment letter dated January 14, 2003.

Water Conservation

[10 V.S.A. § 6086(a)(1)(C)]

19. The proposed tower will not utilize water during or after construction, and, accordingly, the criterion specified in 10 V.S.A. § 6086(a)(1)(c) relating to water conservation is inapplicable. Charlebois pf. at 8.

Floodways, Streams, and Shorelines

[10 V.S.A. § 6086(a)(1)(D)(E) &(F)]

20. These criteria are not applicable because the proposed tower is not located in a floodway, near streams, or on a shoreline. Id.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

21. Based on its location at the top of Glebe Mountain, the proposed tower will not result in an undue adverse impact on wetlands. Id.

Sufficiency of Water and Burden on Existing Water Supply

[10 V.S.A. § 6086(a)(2)(3)]

22. The proposed tower will not use any water and will not place a burden on any existing water supply. Id.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

23. The proposed tower will not result in unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may exist. The only soil disturbance will be related to the insertion of guy wire anchors. Id.

Transportation Systems

[10 V.S.A. § 6086(a)(5)]

24. Because of its location, the proposed tower will not cause unreasonable congestion or unsafe conditions with respect to the use of highways, waterways, railways, airports and airways and other means of transportation existing or proposed. Access will be via an existing roadway that currently services an active telecommunications tower. Id. at 9-10.

Educational Services

[10 V.S.A. § 6086(a)(6)]

25. The proposed tower is unrelated to and will not cause any burden on the ability of any municipality to provide educational services. *Id.* at 10.

Municipal Services

[10 V.S.A. § 6086(a)(7)]

26. The proposed tower will not require any governmental services. *Id.*

**Aesthetics, Historic Sites
and Rare and Irreplaceable Natural Areas**

[10 V.S.A. § 6086(a)(8)]

27. The proposed tower will not have an undue adverse effect on the scenic or natural beauty of the area, esthetics, historic sites, or rare and irreplaceable natural areas. This finding is supported by findings 28 and 29, below.

28. The proposed tower will generally be indistinguishable beyond approximately one mile. Its original weathered galvanized color will blend well with the background sky. The guy wires will be invisible from lower elevations. It is expected that aeronautical lighting will not be required for the tower. There are no historic sites or natural areas in the area. Charlebois pf. at 8.

29. Tree clearing will be limited to a one-third acre triangle, with guy wires extending through the canopy without tree clearing, whenever possible. *Id.* at 9.

Discussion

Based on the above findings, the Board finds that the Project will not have an undue adverse effect on the aesthetics or scenic and natural beauty of the area. In reaching this conclusion, the Board has relied on the Environmental Board's methodology for determination of "undue" adverse effects on aesthetics and scenic and natural beauty as outlined in the so-called Quechee Lakes decision. *Quechee Lakes Corporation*, #3W04 1 1-EB and 3W0439-EB, dated January 13, 1986.

As required by this decision, it is first appropriate to determine if the impact of the project will be adverse. The project would have an adverse impact on the aesthetics of the area if its design is out of context or not in harmony with the area in which it is located. If it is found that the impact would be adverse, it is then necessary to determine that such an impact would be

"undue." Such a finding would be required if the project violates a clear written community standard intended to preserve the aesthetics or scenic beauty of the area, if it would offend the sensibilities of the average person, or if generally available mitigating steps will not be taken to improve the harmony of the project with its surroundings. The Board's assessment of whether a particular project will have an "undue" adverse effect based on these three standards will be significantly informed by the overall societal benefits of the project.²

Given the facts of this case, it would be difficult to find that the proposed tower would have an adverse effect on the aesthetics of the area because the tower is very thin and will be difficult to see from more than a mile away, and the amount of clearing necessary for installation of the towers will be insignificant. We will adopt the DPS's recommendation that a condition should be included in the CPG that states: "Catamount shall minimize tree cutting in connection with the approved project and shall work with a professional forester, prior to cutting any trees, to determine which trees to cut."

Lloyd et al. again argue that Catamount has failed to provide sufficient information to satisfy this criterion. Specifically, these parties suggest that it is not clear from the petition whether the tower will be lighted, there is insufficient information to determine the nature or extent of the visual impacts, and there is no information from which the Board can determine whether the proposed project satisfies the "Quechee Analysis."

We disagree. The question about possible lighting of the tower can be dealt with by including the condition in the CPG as suggested by the DPS. As we have found above, the visual impacts of this tower will be minimal because it will be very difficult to see from more than one mile away, and will be temporary (lasting no more than three years). Finally, we do have sufficient information in the petition to find that the impact of the project under the "Quechee Analysis" will not be adverse, so no additional review of the other components of that analysis is necessary.

2. Consider, for example, reduction in need for power plant or transmission investments, or other social costs.

Necessary Wildlife Habitat and Endangered Species

[10 V.S.A. § 6086(a)(8)(A)]

30. The proposed tower will not have any undue adverse effect on wildlife habitat or have any impact on threatened or endangered species. This finding is supported by findings 31 through 33, below.

31. ANR's Significant Habitat Map shows no known rare, threatened, or endangered species or significant natural communities, nor any deer wintering areas on the site. Charlebois pf. at 9.

32. The surrounding forest cover contains a component of balsam fir. Nevertheless, it is marginal habitat for Bicknell's Thrush, a species of concern in Vermont, due to the high percentage of hardwoods in the forest composition, the tall height and lack of density of the balsam firs, and the open understory. Furthermore, cutting balsam fir will be minimized, given the existing access road and adjacent previously cleared areas. Id.

33. The tower will have no impact on black bear habitat, and the only human activity at the site will be at the time of construction, followed with only infrequent visits for routine and emergency maintenance. There are no physiographic features to suggest that songbird and raptor migration is any more concentrated than at the Searsburg wind site.³ The tower's height will be well below the typical height-above-ground level of migrating birds. Id.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

34. The proposed tower will not unnecessarily or unreasonably endanger the public or quasi-public investment in any public facilities, services or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use of enjoyment of or access to any such facility, service, or lands. Id.

3. The Board issued a CPG for a 6 MW wind generation facility in Searsburg, Vermont. *See* Docket No. 5823, Order of May 16, 1996.

Compliance with Electric Energy Plan

[30 V.S.A. § 248(b)(7)]

35. The proposed tower is consistent with the Vermont Twenty-Year Electric Plan, in accordance with 30 V.S.A. § 202(f). Steinhurst letter dated January 17, 2003.

Outstanding Water Resources

[30 V.S.A. § 248(b)(8)]

36. The proposed tower will not affect any waters of the state that might be designated as Outstanding Resource Waters. *See* Finding 15, above.

Existing or Planned Transmission Facilities

[30 V.S.A. § 248(b)(10)]

37. The proposed tower will not be served by existing or planned transmission facilities and, accordingly, will not have an undue adverse effect on Vermont utilities or customers. *See* Finding 12, above.

Executive Order # 52 – Agricultural Land

38. Based on its location, the proposed tower will have no effect on any prime agricultural soils. Charlebois at 8.

III. CONCLUSION

Based upon all of the above evidence, the proposed construction will be of limited size and scope; the petition does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248; the public interest is satisfied by the procedures authorized by 30 V.S.A. § 248(j); and the proposed project will promote the general good of the state.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the installation of a temporary wind measurement tower on Glebe Mountain in Londonderry and Windham, Vermont, for up to a three-year period, in accordance with the evidence and plans presented in this proceeding, will promote the general good of the State of Vermont in accordance with 30 V.S.A. Section 248, and a certificate of public good shall be issued in the matter.

Dated at Montpelier, Vermont this 29th day of January, 2003.

<u>s/Susan M. Hudson</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

Filed: January 29, 2003

Attest: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.